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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,751	11/17/2003	Jason G. Lang	117P1846US01	3348

7590 02/14/2006

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EXAMINER	
ROWAN, KURT C	
ART UNIT	**PAPER NUMBER**
3643	

DATE MAILED: 02/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/714,751	LANG ET AL.	
	Examiner	Art Unit	
	Kurt Rowan	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *November 4, 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-51* is/are pending in the application.

4a) Of the above claim(s) *49-51* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-48* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114 was filed in this application after appeal to the Board of Patent Appeals and Interferences, but prior to a decision on the appeal. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on May 25, 2005 has been entered.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Celestine in view of Souza (US 4,138,796).

3. The patent to Celestine shows a rodent trap having a wall portion 15, a floor portion 16, a front portion 12, a top portion 11, and sides configured to define a cavity below door 30 and bottom wall 16 in extension 17 as shown in Fig. 1-3. The cavity is

between the wall portion and the front portion. Celestine shows a trap assembly 30 providing access to the cavity. Celestine shows a removable insert receptacle 40 arranged to be housed within the cavity and proximate to the trap assembly. Celestine shows the removable insert receptacle is configured and arranged to contain a rodent within the cavity. The area of Celestine is also a cavity 15 surrounded by walls 12, 13, 14 above the floor 16 and roof 11. Celestine inherently makes the removable insert receptacle from a non-destructive material to thereby prevent the escape of the rodent. The patent to Souza shows a rodent trap that conceptually works on the same concept as the present invention but the two units are adjacent to each other rather than the removabale insert unit being located within the cavity. Souza shows an area of confinement having two doors 32 to form an area of confinement in which the rodent is trapped to prevent escape. When the door 36 to the removable insert receptacle 14 opens, the two doors 32 in the area of confinement close so that the rodent can move to the receptacle. In reference to claim 1, it would have been obvious to provide the trap of Celestine with a door movement operation as shown by Souza so that when the door to the removable insert 40 opens, the door 18 to the trap assembly closes for the purpose of preventing escape of the rodent by jumping back through the open door 18. Then after the door 30 of Celestine closes, the door 18 can reopen to start the cycle over. In reference to claims 2, 22, Celestine does not disclose that the removable insert receptacle is made from metal, but it would have been obvious to make it from metal. See In re Leshin, 125 USPQ 416 which states that the selection of a known material is based on its suitability for the intended use. In refernce to claims 4, 16, 29,

37, Celestine shows a climbing assist member 18, but it would have been obvious to employ more than one for multiplied effect. See In re Harza, 124 USPQ 378. Celestine does not show the climbing assist member being positioned between the wall portion and the front portion and between the floor portion and the top portion and between the sides and being enclosed there between. However, Celestine does show a climbing assist member as a friction surface 18 on ramp 14. At any rate it would have been obvious to employ a climbing assist member or members anywhere in the interior of the trap where it is deemed desirable. See In re Japikse, 86 USPQ 70 which states that the rearrangement of the location of parts is obvious. Applicant should recite the structure of the climbing assist members and the trap in more detail. In reference to claims 5, 11, Celestine does not disclose a maintenance card within the cavity, but it would have been obvious to employ one to determine when the trap was last serviced. In reference to claims 6, 9, Celestine does not disclose that the front portion of the trap looks like a vent, but it would have been obvious to disguise the trap as is well known in the art for the purpose of keeping people away from it.

4. Claims 3, 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Celestine in view of Souza as applied to claim 1 above, and further in view of Denny et al.

The patents to Celestine and Denny show rodent traps. Celestine has been discussed above and does not disclose a glue board. The patent to Denny shows a trap 20 having a glue board 86,88. In reference to claim 3, it would have been obvious to provide

Celestine with a glue board as shown by Denny to retain the rodents in the removable insert receptacle.

Response to Arguments

5. The following remarks from the Final Rejection are noted for future reference in the newly filed RCE.

6. Applicant argues that Celestine, in reference to claims 1, 12, 18, 29, 43, does not show that the cavity can contain a rodent because the rodent could escape from the cavity through the swinging front wall. However, the claim states that the cavity is configured and arranged to contain a rodent, which does not preclude the rodent from leaving. The claim just requires that the cavity can hold a rodent. Applicant has amended the claims to recite that the trap assembly contains a wall portion, a floor portion, a front portion, a top portion, and the sides and the trap assembly are configured and arranged to prevent the escape of the rodent from the cavity. Celestine shows the cavity (an extension of insertion opening 18) under trap door 30 for containing the rodent but also precludes the rodent from exiting. All the other recited elements such as the wall portion the floor portion, the front portion, the top portion, the sides also are configured and arranged to prevent the escape of the rodent from the cavity. Applicant further argues that the present invention contains and prevents escape of the rodent without an insert receptacle and that Celestine requires rodent box 40 to be present to contain and prevent the escape of the rodent. However, this distinction is a functional limitation which would be more properly presented in a method

of trapping claim. Celestine does not contemplate using the trap without the rodent box and shows the same structure recited. Applicant should recite the structural differences and the relationship between them that perform this function. Celestine shows a trap assembly that provides access to the cavity by the rodent and prevents the rodent from exiting the cavity. In reference to claims 12, 18, Celestine shows the interior 15 exposed by the swinging from wall 14 and the insertion opening 18 do not allow for the rodent to be contained therein. However, the rodent is contained in box 40 which is contained in the interior 15. The door 30 provides access to the cavity and acts as part of a trap assembly. Also, the trap assembly of Celestine helps to prevent contaminants from entering the cavity through the elevated trap assembly due to the infrared sensor and the ramp 14. The elevated trap assembly of Celestine also provides the only entrance into the cavity. In response to applicant's argument that there is no suggestion to modify the reference into having the appearance of a vent as recited in claims 6, 9, 23, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the knowledge is generally available to one of ordinary skill in the art by merely attaching the back wall 13 to the side wall of a building and changing the appearance of the trap to resemble a vent. See In re Dailey et. al., 149 USPQ 47. This would not render the trap

unsatisfactory for its intended purpose or even change the principle of operation of the trap. This would permit the rodent box to be removed from the trap from the insertion opening. Hence, making Celestine resemble a vent is possible without completely redesigning the trap and would involve only routine skill in the art.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is (571) 272-6893. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kurt Rowan
Primary Examiner
Art Unit 3643

KR